

To the Under-Secretary for Mines.

As the question is one upon law—namely, as to how the Warden administers the Mining Act under certain circumstances—I must decline to answer it unless authority is quoted showing the right to ask the question. I neither admit nor deny the assertions contained in the last paragraph of this letter. A judicial officer is not answerable to the Audit Department for his judicial acts, and is not a collector of rents.

H. A. STRATFORD,

7th August, 1898.

Warden, Reefton.

SIR,—

Greymouth, 8th August, 1898.

As I am not answerable to the Audit Department for my administration of "The Mining Act, 1891," nor for my judicial acts, I decline to answer the Auditor-General's question (in memorandum quoted in the margin) as to why I cancelled a license for a special claim, No. 356, on 21st January, 1898, before the Receiver of Gold Revenue had collected the rents. As you are aware, section 18, "Mining Act Amendment Act, 1892," empowers the Receiver to sue for arrears of rent whether the license exists or is cancelled, and section 71, subsection (4), "Mining Act, 1891," empowers a licensee to surrender his license at any time he chooses to do so; and when the Mining Registrar places before the Warden the surrendered license, he (the Warden) is compelled by order of the statute to indorse the surrender. There is no uncertain sound about that order—it is imperative; and there has never been a Supreme Court decision otherwise interpreting that section [71, (4)].

The Auditor-General, as protector of the revenue, cannot prevent licensees availing themselves of that provision no more than he can call in question or demand reasons for the judicial acts of the Judges, Magistrates, and Wardens. Probably his course would be to ask his own officer (the Receiver) to set the law in motion to recover the rent.

With regard to the asset, he has no business; and I should be most happy to suggest to him the proper method, were I not afraid that a friendly hint would be misunderstood and treated hostilely by a person who, without any provocation, tried to drag me through the mire in Parliament last year, until the Government interfered on my behalf and protected me. He has evidently been reading the case of *Cuff v. Jordan* (a decision by Judge Conolly) on the interpretation by section 135, "Mining Act, 1891," and has jumped to a conclusion that the Mining Act is perfect.

I have, &c.,

The Hon. the Minister of Mines.

H. A. STRATFORD.

Controller and Auditor-General.

THE Warden's reply is, "That in his judicial capacity he is simply carrying out the law."

12th August, 1898.

A. J. CADMAN.

The Hon. the Minister of Mines.

THE surrender under subsection (4) of section 71 of "The Mining Act, 1891," is subject to section 135, which prescribes that the surrender shall be "on condition that all arrears of rent due up to the date of surrender are paid"; and the granting of the surrender, in accordance with the opinion that the Warden "in his judicial capacity is simply carrying out the law" when he grants a surrender before "all arrears of rent due up to the date of surrender are paid," is calculated to make the person who obtains the surrender without being informed of the liability feel ill-disposed towards the administration when the demand is made, or the proceedings taken, for such unpaid arrears.

Of course, the Receiver can sue for the unpaid arrears whether the surrender has been granted or not; and I would respectfully submit that my reference to you on the subject was prompted not in any idea of interference with a Warden in carrying out the law in his judicial capacity, but by a conviction that the arrears were by law payable before surrender, and that if they were so payable it was the duty of the Audit Office to ascertain why they had not been paid.

J. K. WARBURTON,

Audit Office, 16th August, 1898.

Controller and Auditor-General.

EXHIBIT E.

CUFF v. JORDAN.

Mining Law—"The Mining Act, 1891," Section 135—Surrender of License—"All Arrears of Rent due up to the Date of Surrender."

The licensee of a special claim is required to pay rent in respect of such claim half-yearly in advance; and if he should desire to surrender his license at any time within the interval between two half-yearly days of payment he must pay the arrears of rent due at the date of the surrender. He is not entitled to a deduction or refund in respect of the unexpired portion of the half-year during the currency of which he surrenders.

THIS was a case stated on an appeal from a decision of R. S. Bush, Esq., Warden of the Gold-mining District of Hauraki, in a proceeding at Thames, in which the respondent, suing as the Receiver of Gold Revenue of the district, was complainant, and the appellant was defendant.

The appellant was the registered owner of a special claim held under a license dated the 20th of August, 1896, and known as the Lima Special Claim. Under this license the sum of £25 was payable as rent on the 20th of August and the 20th of February in each year in advance. The rent for the half-year beginning on the 20th of February, 1897, had not been paid. On the 19th of May, 1897, the appellant tendered to the respondent a surrender of his license, together with the sum of £12 10s. as the proportion of rent for the current half-year due up to the date of the surrender. The respondent refused to accept the surrender and the amount tendered, and instituted the present